

Application No.: 10/531,762  
Applicant: Edgar Ivo Maria van der Heijden  
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**Remarks/Arguments:**

**Introduction**

Claims 1-32 are pending in the application. Claims 1, 4, 5, 12, 14, and 15 have been amended. Claims 29-32 have been newly added. No new matter has been introduced. Application is believed to be in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested in view of the below remarks.

**Section 101 Rejection**

Claim 15 is rejected under 35 U.S.C. §101, as allegedly claiming use without setting forth any steps. Claim 15 has been amended. Withdrawal of the rejection is respectfully requested.

**Section 112 Rejections**

Claims 1, 4, 5, 12, 14, and 28 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Specifically, the claims contain unclear terms. Claims 1, 4, 5, 12, 14, and 28 have been amended to remove the unclear term. In view of the amendment, withdrawal of the rejection is respectfully requested.

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### **Section 102 Rejections**

Claims 1-2, 5, 12-13, and 15 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 4,279,938 to Hildebrand (hereinafter “Hildebrand”). Applicant respectfully traverses the rejection.

The present invention relates to the use of a foam dispensing device in the preparation of a beverage. The term “foam dispensing device” means a dispensing device which can, as a stand-alone device, provide a quantity of foam. When using such foam-dispensing device, the base liquid present in a glass is different from the foam liquid.

To create the foam, the foam dispensing device comprises a reservoir containing a stock of foam liquid which foam liquid is different than the base liquid in the glass. By actuation of the foam dispensing device, foam liquid is pumped by a liquid pump from the reservoir to foam forming means where the foam liquid is mixed with air pumped by the air pump to form a foam. This foam is supplied to a base liquid in a glass via a dispensing opening of the foam dispensing device.

The method of claim 1 makes it, for instance, possible to use a foam dispensing device to create a foam head on a glass of water with a syrup foam dispensed by said foam dispensing device, whereby the syrup foam also is used to give the water an attractive color and/or taste.

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Such method makes it possible for children to easily prepare such attractive drinking product.

Other types of foam liquid and base liquids may also be used. However, the base liquid is typically different than the foam liquid.

Hildebrand teaches the use of a device, for instance a syringe, to create a foam head on a glass of stout. To create a foam head, the syringe is dipped into the stout and stout is drawn from the glass into the syringe thereby creating a foam in the syringe chamber. The stout and foam drawn in the syringe chamber may then be ejected to create a foam head on the stout (see column 5, lines 54-68). The syringe cannot be easily used by children to produce a drink with a foam head, and the method of Hildebrand is likely to result in a mess.

The syringe chamber of Hildebrand cannot be regarded as a reservoir for the foam liquid before formation of the foam, since the foam is created when the stout is drawn from the glass into the syringe chamber, and thus the foam is already created when the stout enters the syringe chamber. Further, the syringe of Hildebrand does not comprise a liquid pump to pump foam liquid, which foam liquid is different than the base liquid. Also, the dispensing device does not comprise a separate air pump. In contrast, the syringe only comprises a single cylinder-piston combination to draw stout from the glass. Hildebrand requires that the base liquid be the same as the foam liquid, unlike the claims.

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Moreover, the syringe of Hildebrand cannot form a foam as a stand alone device. It needs the presence of a base liquid in the glass to form a foam. Therefore, the syringe is not a foam dispensing device within the meaning of the present invention.

Claims 2, 5, 12-13 are dependent on claim 1, and therefore patentable over Hildebrand. Furthermore, it is remarked that since Hildebrand does not disclose a device having a separate liquid pump and air pump, there is no common actuation member for manual actuation of these pumps as claimed in claim 12.

Also, Hildebrand does not disclose a dispensing mouth which is directed downwards at one side of the reservoir in such a manner that a glass can be placed next to the reservoir and the foam can flow into the glass from above (as shown in Figure 5 of the present application). In contrast, in the embodiment of Figure 3 of Hildebrand the syringe is completely held above the glass. Thus, even when the syringe chamber would be regarded to be a reservoir, the glass would not be placed next to the reservoir as claimed in claim 13.

A rejection under 102 requires that each and every element is disclosed in the prior art document. Hildebrand fails to disclose each and every element as recited in the claims. Therefore, reconsideration and withdrawal of the rejection section 102 rejections are respectfully requested.

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**Section 103 Rejection**

Claims 3-4 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hildebrand in view of U.S. Patent No. 5,342,635 to Schwab (hereinafter “Schwab”). Applicant traverses the rejection.

The above-arguments equally apply herein as claims 3-4 depend from claim 1.

According to Hildebrand, foam is created by drawing stout from the glass (see column 5, lines 54-63). Thus, the base liquid in the glass and the foam liquid are the same. Schwab teaches that an edible foam may comprise a fruit syrup. However, since according to Hildebrand the foam is formed from the liquid present in the glass, the combination of Hildebrand and Schwab would result in a glass containing the syrup before the foam is formed in that case the foam liquid and base liquid would be the same, in contrast with the present invention.

Therefore, the provision of (fruit) syrup as a foam liquid to create a foam and to supply the foam to a different base liquid is non-obvious over Hildebrand in view of Schwab. Therefore, withdrawal of the rejection is respectfully requested.

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Claims 6-9 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hildebrand in view of U.S. Patent No. 5,848,721 to Cornell (hereinafter “Cornell”). Applicant traverses the rejection.

The above-arguments equally apply herein as claims 6-9 depend from claim 1.

The Examiner concludes that since Cornell discloses straws in combination with a beverage container, it would be obvious to provide such straw as a dispensing line.

However, according to Cornell the straw is integrally provided in the beverage container. It would involve an non-obvious step to disconnect the straw from the beverage container, and to connect it as a dispensing line to the syringe of Hildebrand in order to dispense foam into a glass of liquid as proposed by claims 6-9.

Claims 10-11, and 28 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hildebrand in view of U.S. Patent No. 4,148,417 to Simmons (hereinafter “Simmons”). Applicant traverses the rejection.

The above-arguments equally apply herein as claims 10-11 depend from claim 1.

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Simmons teaches a dispensing container having two compartments each containing a different fluid. For each fluid a different dispensing opening is provided. These dispensing nozzles cannot be regarded as nozzles provided at the free end of a dispensing line.

In claim 28, a pack including two dispensing lines suitable to be used as drinking straws is claimed. The dispensing openings of the dispensing container of Simmons are not suitable as drinking straws. Furthermore, it is unclear how the person skilled in the art would provide these two dispensing openings, as drinking straws, on the syringe of Hildebrand.

Therefore, claims 10-11 and 28 are patentable over prior art. Withdrawal of the rejection is respectfully requested.

Claim 14 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hildebrand. Applicant traverses this rejection.

The above-arguments equally apply herein as claim 14 depends from claim 1.

As explained above, the syringe chamber is not regarded to be a reservoir containing a stock of foam liquid which can be formed into a foam. When the stout enters the syringe

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chamber the foam is already formed. As a result, a cardboard container is not a reservoir according to the invention.

Furthermore, it is remarked that although both syringes and cardboard boxes are well known, this does not necessarily make a combination of a cardboard box and syringe obvious. In fact, the Applicant is not aware of the existence of a syringe having a cardboard box as a syringe chamber.

Therefore, the limitation of claim 14 is not obvious over Hildebrand. Withdrawal of the rejection is respectfully requested.

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**Summary**

Therefore, Applicant respectfully submits that independent claims 1, 15, 16 and 28 and all claims dependent therefrom, are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,

/Anna-lisa L. Gallo/  
Anna-lisa L. Gallo  
Registration No.: 50,279  
Attorney for Applicant

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791  
(973) 331-1700